

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAVID N. BAKER,	:	NO. 1:07-CV-00425
	:	
Plaintiff,	:	
	:	
vs.	:	OPINION AND ORDER
	:	
ALDI, INC.,	:	
	:	
Defendant.	:	

This matter is before the Court on the Magistrate Judge's October 24, 2007 Report and Recommendation (doc. 4), to which no party has filed an objection.

The Magistrate Judge reported the background of this case as follows. Plaintiff filed his case on June 1, 2007, but the record shows no indication that he has served Defendant with a summons or copy of the Complaint, and shows no indication that Defendant has waived service of process (doc. 4). On October 3, 2007, the Magistrate Judge ordered Plaintiff to show cause as to why the case should not be dismissed for lack of prosecution, based on his failure to serve Defendant with the summons and Complaint (doc. 2). Plaintiff responded to the Magistrate Judge's Order that he had "decided to let the Lord" fight the battle (doc. 3).

As the Plaintiff has stated he does not intend to proceed in this matter at this time, and as no answer has been filed, the Magistrate Judge concluded the conditions of Fed. R. Civ. P. 41(a)(1) have been met (doc. 4). Accordingly, the Magistrate Judge

recommended that Plaintiff's Response to the Order to Show Cause be construed as a notice of voluntary dismissal under Fed. R. Civ. P. 41 (a)(1), and this case be dismissed without prejudice (Id.).

Having reviewed this matter, the Court finds the Magistrate Judge's Report and Recommendation well-reasoned and correct. Clearly, Plaintiff has shown lack of prosecution of his claim. Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation (doc. 4), CONSTRUES Plaintiff's Response to the Order to Show Cause as a notice of voluntary dismissal under Fed. R. Civ. P. 41(a)(1), DISMISSES Plaintiff's Complaint WITHOUT PREJUDICE TO REFILING, and TERMINATES this case from the Court's docket.

SO ORDERED.

Date: December 11, 2007 /s/ S. Arthur Spiegel
S. Arthur Spiegel
United States District Senior Judge